

PATENT

APPLICATION 10/829,113

ATTORNEY DOCKET 1999-0408CON (1014-065)

REMARKS

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Applicant respectfully thanks the Examiner for the consideration provided to this application, and respectfully requests reconsideration of this application.

Claims 82-111 are now pending in this application. Each of claims 82 and 95 is in independent form.

The Statutory Double Patenting Rejections

Each of claims 82-111 was rejected for double patenting under 35 U.S.C. 101 for claiming the same invention as that of claims 23-24, 26-29, 32-40, 43-47, 50-51, and 54-59 of prior U.S. Patent No. 6,747,959. The Office Action states, at Page 2:

[t]he claims of the patent and of the instant application cover the same subject matter that is disclosed in the specification. The selection of different algorithms is not grounds for a new patent since the algorithms are the same as the unique algorithm in the specification (defined at Fig. 8 and pg. 27-31). The "binary tree" and "contention" algorithms are disclosed as one algorithm, never as two separate algorithms in the specification.

These rejections are respectfully traversed.

"35 U.S.C. § 101 prevents two patents from issuing on the same invention. See, e. g., *In re Boylan*, 392 F.2d 1017, 55 CCPA 1041 (1968). As we have said many times, 'invention' here means what is defined by the claims, whether new or old, obvious or unobvious; it must *not* be used in the ancient sense of 'patentable invention,' or hopeless confusion will ensue. By 'same invention' we mean identical subject matter ... If it is determined that the same invention is being claimed twice, 35 U. S.C. § 101 forbids the grant of the second patent, regardless of the presence or absence of a terminal disclaimer." *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

Applicant respectfully submits that the present claimed subject matter is not "identical subject matter to that of issued U.S. Patent No. 6,747,959. Specifically, each of claims 82 and 95 of the present application states, *inter alia*, "the reservation request of the second type contending for the second selected minislot based on a contention algorithm. Each of claims

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23 and 38 of issued U.S. Patent No. 6,747,959 states, *inter alia*, "the reservation request of the second type contending for the second selected minislot based on a **blocked binary tree algorithm**. Regarding "reservation requests" the present application states, "reservation requests of the second type by user terminals and for allocating the corresponding uplink channel resources by the central station are governed by a **pseudo-Bayesian controlled Aloha algorithm** or by a **nonobvious blocked-access binary tree algorithm**." See, at least, col. 2, lines 25-28 of issued U.S. Patent 6,747,959. The present Office Action presents no evidence that a "**blocked binary tree algorithm**" is identical to a "**contention algorithm**" that can be either a "**pseudo-Bayesian controlled Aloha algorithm**" or a "**nonobvious blocked-access binary tree algorithm**."

Thus, each of claims 82 and 95 of the present application and claims 23 and 38 of issued U.S. Patent No. 6,747,959 do not claim "identical subject matter". Thus, the present Office Action fails to establish a proper double patenting rejection under 35 U.S.C. 101. For at least these reasons, a reconsideration and withdrawal of the rejection of claim 82 and 95 is respectfully requested. Also, a reconsideration and withdrawal of each rejection of each of claims 83-94 and 96-111, each of which ultimately depends from one of independent claims 82 and 95 is respectfully requested.

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CONCLUSION

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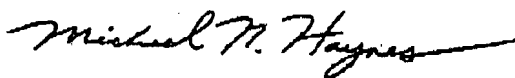
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It is respectfully submitted that the application is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

Michael Haynes PLC



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Michael N. Haynes
Registration No. 40,014

1341 Huntersfield Close
Keswick, VA 22947
Telephone: 434-972-9988
Facsimile: 815-550-8850